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UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

FRANKLIN COVEY CO., a Utah corporation,

Plaintiff,

v.

COMMERICAL METALS COMPANY, a
Delaware corporation,

Defendant.

**COMPLAINT
(Jury Demanded)**

Case No. 2:16-cv-01221-DBP

Magistrate Judge Dustin B. Pead

Plaintiff FRANKLIN COVEY CO. (“FranklinCovey”) brings this action against Defendant COMMERCIAL METALS COMPANY (“Defendant” or “CMC”) for injunctive relief and damages under the laws of the United States, as follows:

Subject Matter Jurisdiction

1. This Court has subject-matter jurisdiction over the claims in this action, which relate to copyright infringement, under 28 U.S.C. § 1338(a) and 17 U.S.C. § 501.

Venue

2. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and 1400(a).

Parties and Personal Jurisdiction

3. FranklinCovey is a Utah corporation with its principal place of business in Salt Lake City, Utah.

4. On information and belief, CMC is a Delaware corporation with its principal place of business in Texas.

5. Defendant states on its website that it maintains a location of business and a sales representative in Brigham City, Utah.

6. On information and belief, Defendant transacts business within the State of Utah, has contracted to supply goods in the State of Utah, has caused injury within the State of Utah, and owns or uses real estate in the State of Utah.

7. On information and belief, Defendant has committed infringing acts in Utah.

8. Accordingly, this Court has personal jurisdiction over Defendant.

Factual Background

FranklinCovey

9. FranklinCovey is a global, public company (NYSE:FC) specializing in performance improvement. It assists organizations and individuals in achieving results that require a change in human behavior. It possesses expertise in seven areas: leadership, execution, productivity, trust, sales performance, customer loyalty, and education.

10. FranklinCovey clients have included 90 percent of the Fortune 100, more than 75 percent of the Fortune 500, thousands of small and mid-sized businesses, and numerous

government entities and educational institutions. FranklinCovey has more than 100 direct and partner offices providing professional services in over 150 countries and territories.

11. Among other activities, FranklinCovey develops, markets, distributes, and/or licenses books, training materials, and media for use in training organizations and individuals on the subjects of productivity, leadership, execution, trust, sales performance, and customer loyalty. FranklinCovey distributes its materials in all forms of media, including print, CD-ROMs, DVDs, webinars, asynchronous self-paced modules, mobile applications, and digital downloads.

12. FranklinCovey invests a substantial amount of time and money in developing its books, training programs, and supplemental materials, which are dense with models and instruction.

13. Certified licensed facilitators and participants pay FranklinCovey for the right to use FranklinCovey's training materials.

The 5 Choices

14. FranklinCovey's marquee productivity products are *The 5 Choices: The Path to Extraordinary Productivity* (book) and *The 5 Choices to Extraordinary Productivity* (training materials) (collectively "The 5 Choices").

15. The 5 Choices shares five critical techniques for acting on the important and not reacting to the urgent. It is time management redefined for the twenty-first century.

16. Drawing insights from the latest neuroscience and decades of experience and research in the time-management field, The 5 Choices trains readers and participants to make more selective, high-impact choices about where to invest their time, attention, and energy.

Applying its techniques leads to measurable increases in the productivity of individuals, teams, and organizations as well as a renewed sense of engagement and accomplishment.

17. The 5 Choices training content can be delivered online via a virtual classroom (offered as self-paced modules) or in a traditional classroom setting.

18. The copyright in *The 5 Choices* was registered with the United States Copyright Office in compliance with the Copyright Revision Act of 1976, 17 U.S.C. § 101, and Copyright Office regulations. Attached to this Complaint as Exhibit “A” and incorporated by reference is a true and correct copy of a Copyright Office webpage attributing Registration No. TX0008001891 to *The 5 Choices*.

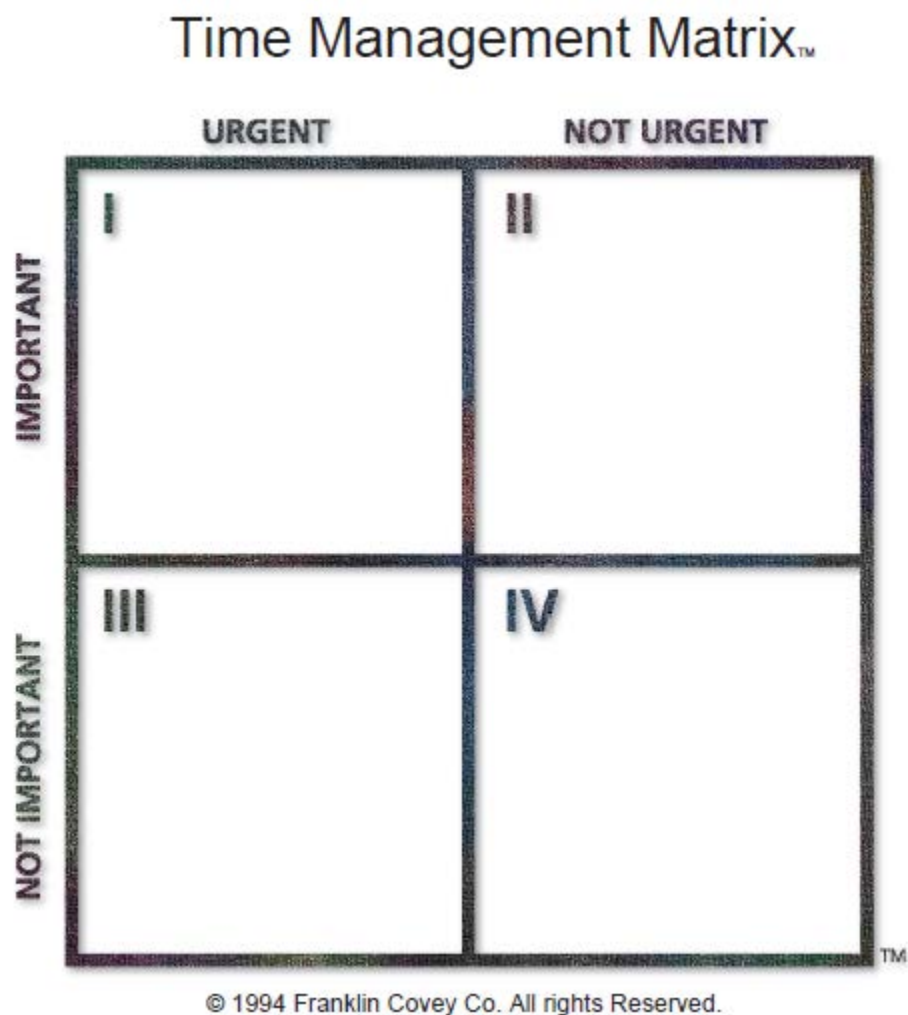
19. The copyright in *The 5 Choices to Extraordinary Productivity* was registered with the United States Copyright Office in compliance with the Copyright Revision Act of 1976, 17 U.S.C. § 101, and Copyright Office regulations. A true and correct copy of the Registration Certificate, which bears Registration No. TX0007553332, is attached to this Complaint as Exhibit “B” and is incorporated by this reference.

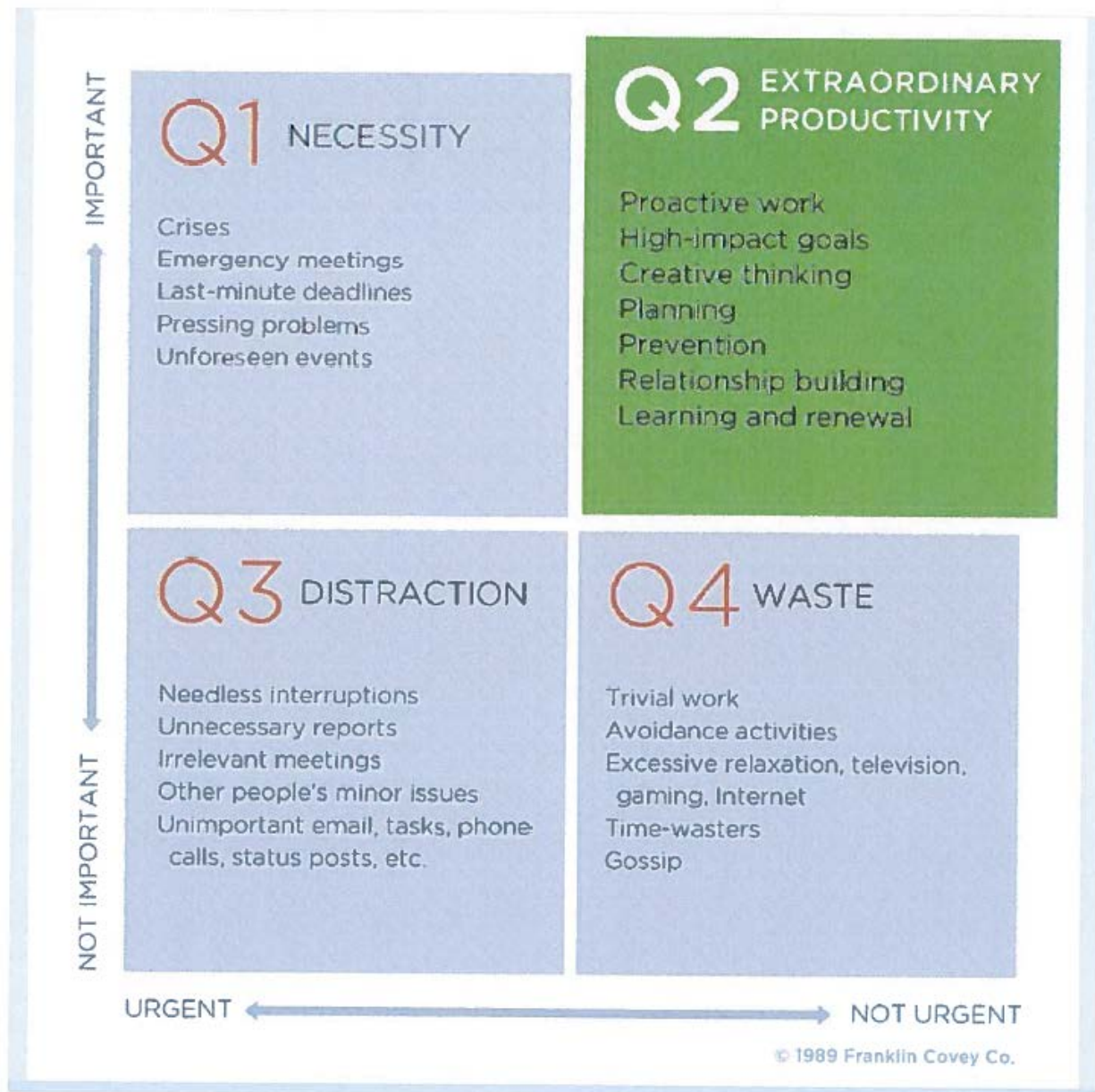
The Time Matrix model

20. The 5 Choices depicts and teaches from a model that FranklinCovey refers to as The Time Matrix model.

21. The Time Matrix model is one of FranklinCovey’s most enduring models for helping people manage their time and make better decisions about where to spend their time, attention, and energy.

22. The Time Matrix model depicts four quadrants where people spend their time. Each quadrant represents tasks that are either urgent or not urgent and important or not important. Two depictions of The Time Matrix model follow. The first is also attached as Exhibit “C.” The second is shown in The 5 Choices and, along with a number of other versions, is attached as Exhibit “D.”





23. Using The Time Matrix model, The 5 Choices teaches that to be truly productive, people should minimize the time spent in Q1 and Q3, eliminate the time spent in Q4, and maximize the time invested in Q2.

24. As The 5 Choices explains, the key to spending more time in Q2 is to pause the reactive brain (which is the source of reflexes, instincts, emotions, reactions, and impulses), clarify the task at hand, and decide whether the task is worth one's time and energy. The 5 Choices refers to this process as "Pause-Clarify-Decide (PCD)."

25. The 5 Choices trains supervisors and employees on how they can use The Time Matrix model and PCD to create a "Q2 culture" where people consciously focus their attention and energy on the tasks that will have the biggest impact.

26. The copyright in the expression of The Time Matrix was registered with the United States Copyright Office in compliance with the Copyright Revision Act of 1976, 17 U.S.C. § 101, and Copyright Office regulations. A true and correct copy of The Time Matrix Registration Certificate, which bears Registration No. TX 0007468691, is attached to this Complaint as Exhibit "E" and is incorporated by this reference.

The 7 Habits of Highly Effective People

27. The 5 Choices is not the only FranklinCovey work that teaches the concepts of time management and prioritization.

28. In 1989, Dr. Stephen R. Covey wrote a book entitled *The 7 Habits of Highly Effective People* ("The 7 Habits"). This book instructs individuals and corporations on how to become better organized, be more effective, develop as leaders, and achieve optimal workplace and individual productivity and success. Unlike other offerings, the book teaches an inside-out approach to personal and leadership development.

29. The 7 Habits has sold more than 20 million copies in 38 languages. Dr. Stephen R. Covey was named to Time magazine's top 25 most influential Americans of 1996, and The 7 Habits has appeared on several lists as one of the best business books ever.

30. The 7 Habits depicts and provides instruction on The Time Matrix model.

31. Using The 7 Habits, FranklinCovey has developed training to teach leaders and managers principles that yield greater productivity, improved communication, strengthened relationships, increased influence, and laser-like focus on critical priorities. Training based on The 7 Habits gives corporate leaders and managers the tools they need to create high-performing cultures in their teams and to effectively engage their teams to achieve sustainable results.

32. The 7 Habits has been the basis of several derivative works, including among others: *First Things First*; *The 7 Habits of Highly Effective People Signature Program*; *The 7 Habits for Managers*; *Focus on Time Management Seminar*; and *The 5 Choices: The Path to Extraordinary Productivity* (book and supplemental training).

33. The copyright for *The 7 Habits of Highly Effective People* was registered in compliance with the United States Copyright Office in compliance with the Copyright Revision Act of 1976, 17 U.S.C. § 101, and Copyright Office regulations. A true and correct copy of the Registration Certificate, which bears Registration No. TX0002680685, is attached to this Complaint as Exhibit "F" and is incorporated by this reference.

34. The copyright in *First Things First*, which also depicts The Time Matrix, was registered with the United States Copyright Office in compliance with the Copyright Revision Act of 1976, 17 U.S.C. § 101, and Copyright Office regulations. A true and correct copy of the Registration Certificate, which bears Registration No. TX 3-897-505, is attached to this Complaint as Exhibit “G” and is incorporated by this reference.

35. The copyright in *The 7 Habits of Highly Effective People Signature Program*, which includes a depiction of the Time Matrix, was registered with the United States Copyright Office in compliance with the Copyright Revision Act of 1976, 17 U.S.C. § 101, and Copyright Office regulations. Attached to this Complaint as Exhibit “H” and incorporated by reference is a true and correct copy of a Copyright Office webpage attributing Registration No. TX0007325925 to *The 7 Habits of Highly Effective People Signature Program*.

36. The copyright in *The 7 Habits for Managers*, which includes a depiction of the Time Matrix, was registered with the United States Copyright Office in compliance with the Copyright Revision Act of 1976, 17 U.S.C. § 101, and Copyright Office regulations. A true and correct copy of the Registration Certificate, which bears Registration No. TX 8-032-030, is attached to this Complaint as Exhibit “I” and is incorporated by this reference.

37. The copyright in *Focus on Time Management Seminar* was registered with the United States Copyright Office in compliance with the Copyright Revision Act of 1976, 17 U.S.C. § 101, and Copyright Office regulations. A true and correct copy of the Registration Certificate, which bears Registration No. TX 2-033-301, is attached to this Complaint as Exhibit “J” and is incorporated by this reference.

The 4 Disciplines of Execution

38. FranklinCovey also offers training to reinforce the manager's role in achieving goals. This training is derived from the book *The 4 Disciplines of Execution*. The 4 Disciplines of Execution teaches a simple, repeatable, and proven formula for executing on the most important strategic priorities in the midst of the whirlwind of urgent activity. When a company or an individual adheres to this formula, they achieve superb results—regardless of the goal.

39. The copyright in *The 4 Disciplines of Execution* was registered with the United States Copyright Office in compliance with the Copyright Revision Act of 1976, 17 U.S.C. § 101, and Copyright Office regulations. Attached to this Complaint as Exhibit “K” and incorporated by reference is a true and correct copy of a Copyright Office webpage attributing Registration No. TX0007536293 to *The 4 Disciplines of Execution*.

Defendant's Unlawful Conduct

40. FranklinCovey is informed and believes, and on that basis alleges, that Defendant is involved in training its employees using FranklinCovey's copyright-protected content, including The 5 Choices and The 7 Habits, without authorization to do so.

41. On or about July 15, 2016, a FranklinCovey employee, Peter Montgomery, met with Brian Thompson, Manager of Learning & Development of CMC, to pitch FranklinCovey's training services.

42. Mr. Thompson said that he would not be purchasing FranklinCovey's services.

43. Mr. Thompson then shared with Mr. Montgomery a training program that Mr. Thompson had rolled out to approximately 600 leaders within CMC. The leaders were those who had been recently promoted or would soon be promoted within CMC. CMC had trained the

leaders over the last year using the program, which was a series of 7 essentials of management (leadership).

44. Mr. Thompson called one component of the training “prioritization.”

45. Mr. Thompson showed Mr. Montgomery an employee handbook, titled “Essentials of Management.” It was one of several materials that appeared to be part of the training program. Mr. Thompson did not show Mr. Montgomery the other materials.

46. The front of the handbook contained several marketing slicks from FranklinCovey marketing campaigns, including Speed of Trust, Leading Across Generations, and The 7 Habits.

47. Mr. Montgomery saw copies of FranklinCovey’s copyrighted works on Mr. Thompson’s shelf.

48. Mr. Thompson showed Mr. Montgomery a page from the employee handbook that contained The Time Matrix. The page also referred to Stephen R. Covey and described The Time Matrix. The handbook made additional reference to The 7 Habits on subsequent pages.

49. Mr. Thompson informed Mr. Montgomery that CMC was preparing the same content for a capstone training that it intends to deliver to the same audience. According to Mr. Thompson, the training will repeat the same concepts.

Defendant’s Willful Infringement

50. During the July 15 meeting, Mr. Montgomery informed Mr. Thompson that the materials infringed FranklinCovey’s copyrights.

51. On July 22, Mr. Montgomery contacted Mr. Thompson and explained that CMC needed to license FranklinCovey’s intellectual property before CMC could use FranklinCovey’s intellectual property to train its employees. Mr. Thompson agreed to speak with his supervisor.

52. Soon after their conversation ended, Mr. Thompson called Mr. Montgomery and claimed that CMC was not infringing FranklinCovey's intellectual property.

53. Mr. Thompson told Mr. Montgomery that CMC's legal counsel had reached that conclusion.

54. Mr. Thompson did not deny that CMC was using FranklinCovey's concepts.

55. On information and belief, Defendant continues to use FranklinCovey's copyright-protected content, notwithstanding FranklinCovey's demand that CMC cease and desist use.

Defendant's Infringement in Utah

56. Defendant states on its website that it maintains a location of business in Brigham City, Utah and lists on its website a sales representative located in Brigham City, Utah.

57. Given that Defendant maintains a location of business and a representative in Utah, FranklinCovey alleges on information and belief that Defendant has copied, distributed, or prepared derivative works based on FranklinCovey's copyright-protected works in Utah.

First Claim **(Copyright Infringement—17 U.S.C. § 501)**

58. FranklinCovey alleges, and incorporates by this reference, each and every allegation set forth in the paragraphs above.

59. Through assignment or otherwise, FranklinCovey is the sole owner of or otherwise exclusively licenses all right, title, and interest in and to the copyrights and Certificates of Registration identified above.

60. On information and belief, Defendant's training materials depict identical and/or substantially similar versions of FranklinCovey's copyright-protected content, including but not limited to The 5 Choices, The 7 Habits, and The Time Matrix.

61. As a result of the foregoing activity, Defendant is liable to FranklinCovey for copyright infringement under 17 U.S.C. § 501.

62. FranklinCovey has suffered a diversion of trade and losses in an amount not yet ascertained but that will be determined according to proof. In addition to FranklinCovey's actual damages, FranklinCovey is entitled to receive the profits made by Defendant from its wrongful acts. 17 U.S.C. § 504.

63. In the alternative, FranklinCovey is entitled to statutory damages pursuant to 17 U.S.C. § 504(c) and these statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2) because of Defendant's willful copyright infringement.

64. FranklinCovey has no adequate remedy at law for the Defendant's wrongful conduct in that (a) FranklinCovey's copyrights are unique and valuable property which have no readily determinable market value; (b) the infringement by Defendant constitutes an interference with FranklinCovey's goodwill and customer relationships; (c) Defendant's wrongful conduct, and the damages resulting to FranklinCovey therefrom, is continuing; and (d) Defendant's training materials use an identical or substantially similar expression of FranklinCovey's content. Defendant's acts of copyright infringement have caused FranklinCovey irreparable injury and Defendant threatens to continue to commit these acts. Accordingly, FranklinCovey is entitled to injunctive relief pursuant to 17 U.S.C. § 502.

65. Pursuant to 17 U.S.C. § 503, FranklinCovey is entitled to an order requiring the impoundment and destruction of all copies of infringing materials and all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies may be reproduced.

66. FranklinCovey is also entitled to recover its attorneys' fees and costs of suit pursuant to 17 U.S.C. § 505.

Jury Demand

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Franklin Covey demands a trial by jury of all issues so triable.

Request For Relief

WHEREFORE, FranklinCovey respectfully requests judgment as follows:

(1) That the Court enter a judgment that Defendant has infringed the rights of FranklinCovey in its federally registered copyrights under 17 U.S.C. § 501.

(2) That the Court issue injunctive relief against Defendant, and that Defendant, its officers, agents, representatives, servants, employees, attorneys, successors, and assigns, and all others in active concert or participation with Defendant, be enjoined and restrained from:

(a) copying or making derivative works based on and protected by the following Certificates of Copyright Registration:

- (1) TX0008001891 The 5 Choices
- (2) TX0007553332 The 5 Choices to Extraordinary Productivity
- (3) TX0002680685 The 7 Habits of Highly Effective People
- (4) TX 3-897-505 First Things First

(5) TX0007325925 The 7 Habits of Highly Effective People Signature Program

(6) TX 8-032-030 The 7 Habits for Managers

(7) TX0007468691 The Time Matrix

(8) TX 2-033-301 Focus on Time Management Seminar

(9) TX0007536293 The 4 Disciplines of Execution

(b) Distributing, offering for distribution, circulating, selling, offering for sale, advertising, importing, promoting, or displaying any content represented by the Copyright Registration Nos. listed in Section (2)(a) above.

(3) That the Court order Defendant to pay FranklinCovey's general, special, actual, and statutory damages as follows:

(a) FranklinCovey's damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) or, in the alternative,

(b) enhanced statutory damages pursuant to 17 U.S.C. § 504(c)(2) for Defendant's willful infringement of FranklinCovey's copyright.

(4) That the Court order the impoundment and destruction of all copies of infringing materials and all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies may be reproduced.

(5) That the Court order Defendant to pay to FranklinCovey both the costs of this action and the reasonable attorney fees incurred by it in prosecuting this action; and

(6) That the Court grant to FranklinCovey such other and additional relief as is just and proper.

DATED this 2nd day of December, 2016.

RAY QUINNEY & NEBEKER P.C.

/s/ S. Brandon Owen

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